

**THE
CRIMINAL JUSTICE
SYSTEM
AND
CRIME DETERRENCE**

CITIZENS RESEARCH COUNCIL OF MICHIGAN

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SYMPOSIUM PROGRAM

A SYMPOSIUM HELD ON MAY 10-11, 1976

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Symposium Summary

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The Legislature and the Criminal Justice System

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Some Reflections on the Criminal Justice System

INTRODUCTION

Prompted by research which indicates that persons who commit serious crimes in Michigan are not very likely to be apprehended, convicted or punished, the Citizens Research Council of Michigan, with a grant from National Bank of Detroit, requested several of the leading participants in the Michigan criminal justice system to address the question: What can be done to deter crime?

Program participants are listed on the opposite page. Subsequent pages in this publication include portions of the Symposium background paper prepared by Citizens Research Council setting forth the organization of the Michigan criminal justice system and its operations. The speeches of the other participants are synopsized with the exception of the remarks of Dr. James Q. Wilson, who spoke at the Symposium dinner, and Mr. James H. Brickley who chaired and summarized the program.

Copies of full speeches of all participants are available from Citizens Research Council on request. To enable us to run adequate number of copies of full speeches, it would be appreciated if orders could be submitted immediately.

SYMPOSIUM SUMMARY

James H. Brickley

First, I want to thank all the discussion leaders who came here after a great deal of preparation to not only share their experience and thinking but also to stay and listen to one another and participate in the same way the rest of us have. More importantly, I want to thank all of you for taking time out from your busy schedules to come and provide a forum whereby we can express ideas on the criminal justice system, attract some public attention to them and help surface and isolate the issues on which we must work in order to improve crime deterrence.

If there is one thing I have learned from more than twenty years in government, at Federal, state, county and local levels – a good part of it in law enforcement – it is that progress in government is a game of inches and you had better be satisfied with the inch otherwise you will become frustrated and become a dropout as so many people have. I have a feeling that we gained a few inches here. If we go out saying “but what are we going to do about it,” I think perhaps we’ve lost the significance of what has transpired – that is, we’re trying to keep fighting that game of inches. I’m just very pleased that I was able to play a part in these two days. I have been in the legislative process, in the prosecutorial process, and I have been an investigator of crimes in New York and West Virginia. I’ve watched a lot of criminal conduct over the years; but, the fascinating part is not the criminal conduct itself, it’s our response to it – the response of society and the response of the criminal justice system.

In the last forty hours we have heard from a number of distinguished people who know crime and what it does to people, cities and nations. The full gamut of the criminal justice system was represented by highly respected practitioners. All are dedicated to crime deterrence.

It is interesting that all seemed to center on four or five subjects, but there was no one subject on which all agreed.

There is the question of whether or not we are being too liberal in allowing appeals for certain kinds of cases; particularly appeals from criminal pleas, where a person who has admitted guilt subsequently tries to overturn that plea after he or she is sitting in prison.

We have heard about the frustrations over the fact that people who have been arrested proceed to commit other crimes while they are out on bail – bail that some consider too low – waiting for the rather slow process of justice to grind. We have also heard from the civil libertarians who remind us that bail is not to punish a person who has not been found guilty yet, but merely to insure attendance at trial.

More importantly, we have heard two views of who is responsible for



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Mr. Brickley, who chaired Michigan’s Crime Commission during the early 1970s, received his law degree from the University of Detroit and a master’s degree in public and administrative law from New York University. He is a Director of the Thomas M. Cooley Law School.

crime. We have heard from Judge Crockett, I think probably the best exponent of the social and medical view, who says that we will not solve crime until society is ready to pay for crime and pay the price of eliminating it. We have heard from the very eloquent Dr. Wilson, an amply documented point of view that's also strongly held in this community by Prosecutor Cahalan – the view that indeed we will not stop crime until the criminal knows that misdeeds will carry a penalty. And it is here that I think we really get down to the bottom line. It is where the real philosophical question is – who is responsible for criminal acts? Until we fix that responsibility, we won't know who to punish and to what extent we ought to punish.

We have the middle people like Perry Johnson, who in a sense agrees that we ought to give up the idea that we're going to change people's lives by putting them in jail; a proposition that quite a few seem to agree with. On the other hand, he is not ready to have a flat sentence for everybody for the same crime. He suggests that rather than releasing people because they might have been rehabilitated, we should release people who we know are safe to release, who we know will not go out and do further harm. He sees prison primarily as a place to separate the hardened offender from the fundamentally law abiding, so that we can protect society.

Probably, as you have listened to all of these different views from the different components in the criminal justice system, you have wondered how the system works, because all of the important actors in the system have different views about the ultimate responsibility for criminal acts. This, perhaps, should not be surprising.

It has been pointed out in this conference that every one of these important people in the criminal justice system who have spoken to us in the last day-and-a-half is responsible to a different electorate at a different time, under different circumstances. Perry Johnson is appointed by a Corrections Commission, which is in turn appointed by the Governor. The Governor is elected in a state-wide election, that oftentimes does not even involve the criminal justice issue. Certainly the corrections issue has not been very prominent in recent gubernatorial elections. One judge, who is here, was elected in a non-partisan race from Kent County in Grand Rapids. Another one was elected in a non-partisan race in Detroit. Prosecutor Cahalan is elected in a partisan race, for four years, by still a different constituency. And we can go on and on and on. Chief Tannian is responsible to an elected Mayor in the City of Detroit and also to a group of five commissioners, who in turn are responsible to the Mayor. We have a highly diffused, disjointed criminal justice system. Looking at it objectively, we would almost have to agree with Chief Tannian that it is designed to fail. If you wanted to design a system that could not be effective, you would design it the way we presently have it. I don't think, on the other hand, anybody is willing to have a czar for criminal justice. The civil liberties concept and the fear of government is too deeply engrained in us to do that.

Under these circumstances, how can we even come up with a decision on what to do about crime and crime deterrence? Essentially, it will come from the people, the real czar. When the people have been sufficiently informed about the alternatives, and when they have really decided on the answers to the basic philosophical questions, they will, in the course of a series of elections in the counties and cities and townships and across the state, press for a rather simple solution. I think that simple solution will

be to hold criminals accountable for their acts, to prosecute them as swiftly as we can, consistent with Constitutional liberties, and to punish them when they have been convicted of violating the law. The people are going to demand more accountability from the people who commit the crimes and from the people in the criminal justice system who are responsible for crime deterrence. Then, perhaps, we can turn out attention to the longer range social causes of crime that we all admit influence criminal conduct. As long, however, as we confuse all of these roles, confuse them not only in the criminal justice system, but confuse them with the broad range of governmental social services that are not in the criminal justice area, we will frustrate all of our efforts to do anything about either the long-range social problems or the crime problems.

I believe that the last day-and-a-half we have moved an inch, or two, or three toward that ultimate goal that beckons us all.

Crime and the Criminal Justice System

Robert E. Pickup

Crime rates are high in Michigan and going up. They are significantly higher than in neighboring states and significantly higher than in the U.S. as a whole. Crime has a considerable impact on the life-style of everyone; an impact so serious for many that life has hardly any style at all. There have been similar social breakdowns at other times in the history of civilized people. The high crime intensity of these other times was reversed when people decided that it was no longer to be tolerated. There is evidence that such an attitude may be developing here and now.

The criminal justice system is the instrumentality developed by democratic governments to preserve the peace through the apprehension of the criminal and the suppression of crime.

In a formal sense, the Michigan criminal justice system includes those state and local governmental functions and agencies involved in the enforcement, prosecution, defense, adjudication, punishment and rehabilitation processes of the criminal law. This system is massive in cost, size and complexity. Michigan state and local governments spent over \$600 million on the criminal justice system in fiscal 1973-74. This represented 6.4 percent of total state and local spending for all purposes. There were 35,000 persons employed in the Michigan criminal justice system and upwards of 1,000 separate state and local government agencies involved. Included are police and sheriffs departments, prosecutor's offices, defender groups, courts and correctional agencies.

The Michigan Advisory Commission on Criminal Justice stated that its objective in establishing goals and standards for the criminal justice system was to "reduce the incidence of criminal acts, assure the equal protection under law of the rights of victims and the accused, and increase the efficiency, effectiveness and productivity of all those in the criminal justice system." The Advisory Commission further stated: "This overall aim is tempered by the stark realization that the criminal justice system alone cannot prevent crime. This responsibility is shared by the family, peer groups, schools, churches, recreational and service organizations, health and mental systems, and the entire complex (of) manpower development and employment." This broad-based responsibility is why crime cannot and will not be reduced until the people determine that it is to be reduced. This is why in a broader sense the criminal justice system includes the nine million citizens of Michigan, some of whom are the perpetrators and victims of criminal acts, and their elected representatives at



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Mr. Pickup's career in the field of citizen concern with governmental operations spans 40 years and includes more than ten years as Vice President of the Pennsylvania Economy League. A graduate of Brown University, Mr. Pickup is a past president of the Governmental Research Association. He is a member of the National Advisory Council of the Center for the Administration of Justice and is a Trustee and Vice President of the Relm and Earhart Foundations.

the state and local levels who define through laws and ordinances what constitutes criminal behavior, establish penalties, and provide the resources for the criminal justice system.

Police

Police agencies are charged with the enforcement of the criminal laws, the prevention of criminal activity, the investigation of criminal offenses and apprehension of offenders, and participation in court proceedings.

Responsibility for police services in Michigan is shared by the Michigan State Police, the 83 county sheriffs departments and about 430 city, village and township police departments. In 1974, Michigan police services cost \$354 million and 21,500 full-time equivalent employees were engaged in providing them.

The Michigan State Police department is under the direction and control of the Governor. The 83 county sheriffs are elected by the people. The 430 city, village and township police agencies are under the supervision of the governing body of the local unit.

Prosecutor

The prosecution of criminal cases in Michigan is handled primarily by the county prosecutors' offices. The Michigan Attorney General's office exercises prosecution functions in certain specialized areas and has the statutory responsibility to supervise the work of the county prosecuting attorneys. The Attorney General is elected statewide and the 83 county prosecutors are elected in their respective counties. The county prosecutors are responsible for representing the people in criminal proceedings and in county ordinance cases. Violations of city, village and township misdemeanor ordinances are prosecuted by city, village or township attorneys. In 1974, prosecution services cost \$30 million and involved 1,600 full-time equivalent employees.

Defendants are entitled to be represented by defense counsel at all stages of a criminal proceeding. This may be done through attorneys retained by the defendant or by county assignment of defense counsel to indigent defendants. There are almost 15,000 lawyers in Michigan, 1,375 of whom are members of the criminal law section of the State Bar. In 1974, state and local governments in Michigan spent \$8 million on indigent defense services.

The Courts

Michigan has a unified court system consisting of the Supreme Court, the Court of Appeals, the Circuit Court, the Probate Court, Recorder's Court and Municipal courts. The court system plays a vital role in the criminal justice process from the arrest stage through trial and sentencing. The courts are responsible not only for the formal processing of fully litigated criminal prosecutions, but for the administrative processing of criminal cases.

In 1974, the judicial system in Michigan spent \$86 million and had 5,600 full-time equivalent employees. There are a total of 245 courts with 509 elected judges that have responsibilities in the criminal justice process.

Probation services are supervised by the courts. These services include pre-sentence investigations and monitoring and supervising convicted offenders who are placed on probation. Probation officers are provided the courts by the State Department of Corrections and by some of the counties in felony cases. Some counties and cities provide probation officers to the District and Municipal courts to supervise misdemeanants who do not require incarceration.

Corrections

The Michigan correctional system includes prisons, jails, parole services and community programs. The responsibility for correctional services is shared by the state and by local units of government. In 1974, total state-local expenditures for corrections were \$118 million and 6,600 full-time equivalent employees were involved in the correctional process.

The State Department of Corrections operates 7 correctional institutions and 12 corrections camps, and a number of community centers and resident homes. The operation of jails for the pre-trial detention of prisoners and for serving short sentences is primarily the responsibility of the counties. Jails are administered by the elected county sheriffs. There are currently 77 county jails in Michigan. In addition, jails are operated by 4 cities for short-term prisoners convicted of ordinance violations.

Lock-ups are used to detain persons charged with a criminal offense for periods up to 48 hours pending first court appearance. There are 92 lock-ups in the state operated by local police departments and 4 counties that do not have jails operate lock-up facilities. The State Department of Corrections establishes standards and inspects jails and lock-up facilities.

Under certain conditions, a parole with supervision may be granted by the State Parole Board to a prisoner who has served a portion of his prison term. The Michigan Department of Corrections is responsible for supervising adults on parole.

The Criminal Justice Process

Let us look at the criminal justice process in terms of a primary objective of the criminal justice system – crime deterrence. For some, the mere presence of thousands of police, judicial and corrections personnel and the attendant public institutions may be sufficient to deter criminal activity. But it would also seem that the extent to which the criminal justice system deters persons from committing crimes depends, in part, on the ability to demonstrate that an individual who commits a crime stands a reasonably good chance of being apprehended, convicted, and punished appropriately. According to deterrence theory, this process should deter convicted offenders from pursuing further illegal acts as well as any other persons who may in the future be tempted to commit crimes.

In 1974, there were 591,664 index offenses reported to police agencies in Michigan. Crime victimization studies suggest that there were perhaps an additional one million index offenses that were not reported to the police. Index offenses include murder, rape, robbery, aggravated assault, burglary, larceny and auto theft.

The chart [Results of the Criminal Justice Process] illustrates several of the major steps in the criminal justice process and shows the flow of 1,000 serious crimes through the process to illustrate statistically the re-

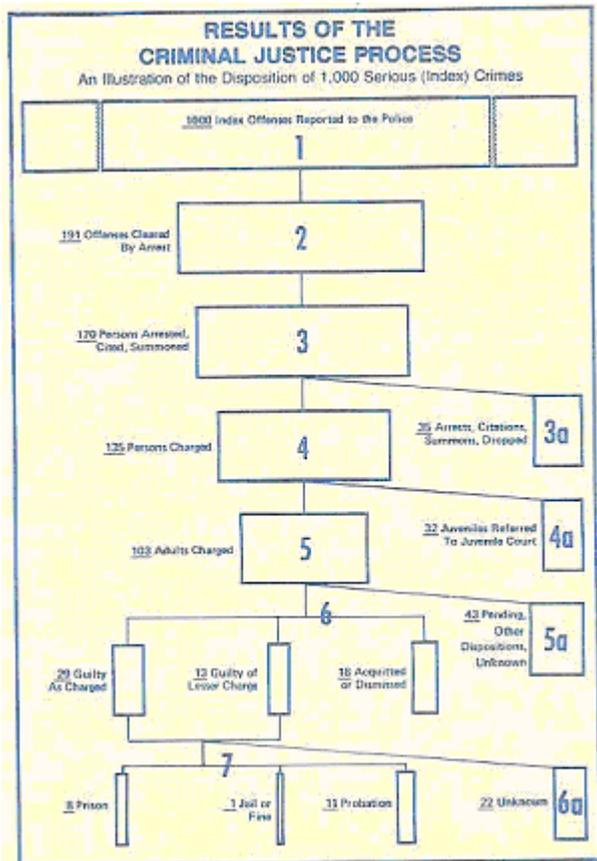
sults of the criminal justice system. For example, the block at the top labeled 1 represents 1,000 index offenses reported to the police. Step 2 indicates that of every 1,000 index offenses reported to the police in Michigan in 1974, 191 (19.1%) were cleared by arrest of the offender. For 80.9 percent of the offenses, the police were unable to identify the offender or did not have sufficient evidence to charge him.

In summary, the chart illustrates that 19.1 percent of the serious offenses reported to the police are cleared by arrest; that adults are charged for only 10.3 percent of the reported offenses; that adults are found guilty of only 4.2 percent of the reported offenses; that adults are sentenced to prison, jail or probation for only 2.0 percent of the reported serious offenses; and that prison and jail sentences are imposed for less than 1.0 percent of the serious crimes reported to the police. Even if it were assumed that all of the juveniles referred to juvenile court were “guilty” (Step 4a), in only 7.4 percent of the serious offenses reported to the police would persons be found guilty and less than 2.0 percent would be sentenced to an adult or juvenile correctional institution.

The profile of “outcomes” of the criminal justice system suggests that persons who commit serious crimes are not very likely to be apprehended, convicted or punished. While this is a cause for concern, it probably should not be the basis for blanket condemnation of the criminal justice system.

Rather, it raises the question—what can be done both internally and from the outside to make the system more effective in deterring crime?

In this **Symposium** – *The Criminal Justice System and Crime Deterrence* – the Research Council goes to the system itself for answers. Let me say, here, only that those we sought out and who have been so gracious in their response have these qualities to commend them to the task; intimate, direct knowledge of the subject matter; a reputation for thoughtfulness and caring; and a previously demonstrated willingness to speak out.



The Heavy Hand of Crime

Ernest C. Browne, Jr.

I would like to preface my remarks by complimenting private enterprise and a citizen-community-orientated group for pooling their resources to sponsor this type of program. I was asked to participate in this program in my capacity as President of the Michigan Municipal League. However, as an elected public official and career public servant, as a father, and as a volunteer community worker, I find it difficult to separate these roles so as not to find myself in conflict with the policy of the Michigan Municipal League. If I make any switches here that aren't obvious, I will try to warn you that I am putting on a different hat.

During this Bicentennial year much emphasis is being placed on our heritage and history of our country, so I was asked to pause and reflect on one of the most pressing problems in America today – crime. It is difficult for me to put into words the impact of the “heavy hand of crime” in some areas, especially where the individual fear of a citizen is concerned. However, within the last few weeks, I've seen some remarkable articles by people in the news media that touch upon this impact – this heavy hand of crime. One was written by Mr. Frank Angelo, a more gentle person you will not find. A strong believer in his home city, he is a man of great faith in people. He was dismayed at a recent meeting where he gave a very positive talk on Detroit to a group of older citizens at a church and they expressed to him their individual fears and problems regarding crime. When he thought he had answered all the questions from an optimistic viewpoint, the chairman announced that one person who was to participate in the program was not there because she was mugged the night before. This undid everything positive he had said.

Costs of Crime

Now, we have one example that I have mentioned of the fear of crime by so many. You can suffer from this fear whether you are an actual victim or not. In fact, by the fear itself you have become a victim. If you become a direct victim through theft, assault, or some other act of violence, then the heavy hand of crime falls on you not only from the physical pain and anguish you suffer, but also from the standpoint of medical costs, lost wages and income, stolen property, or curtailed mobility. Fear of crime results in increased expenditures for locks, alarms, and other protective systems to prevent the hand of crime from reaching into your pocket. There is the increased cost of merchandise due to crime passed on to the consumer by business.



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The Detroit native is President of the Metropolitan Detroit Area Boy Scouts of American and is active in many local community organizations. He received a Bachelor of Science degree from Wayne State University.

How does this affect us involved in government as elected officials and administrators who must provide the funds for this? It is certainly increasing the costs of government in many ways. Approximately 40 percent of the revenues of our cities are spent on public safety. We pay in other ways such as the increased costs of street lighting and improvements that citizens demand. We are going through a very frustrating experience in Detroit at this particular time in trying to prepare our budget. It is known that there will be a deficit for next year and we are probably faced with the lay-off of policemen and firemen. We're having a tough time now and yet we may face lay-offs.

Who Is To Blame?

What are some of the problems we see as elected officials in trying to administer our cities? Within the criminal justice system, I have found many disagreements about the problem and this certainly contributes to the confusion. The police blame the prosecutor's office and the judiciary; the prosecutor blames the police and the courts; the judge blames the police and the prosecutor; and they all blame the corrections system for not rehabilitating criminals.

We often see conflicting reports about the criminal justice system in the news media and in other printed matter. For instance, something that shocked us all recently was an article on narcotics raids. We've been doing our best to cut off the supply of narcotics coming in from Mexico and now someone is saying that this is the wrong approach. This article said that if you cut off the supply of narcotics, it drives the price up and crime increases because the criminals have to commit more and more vicious crimes in order to acquire the money to buy narcotics. Where is the answer to this and what is the citizen to expect?

Possible Remedies

It's time now to talk about some of the recommendations that I feel need to be done from the standpoint of an elected official who has a responsibility along with other officials of trying to raise money to do something about crime. We've heard something about the basic causes of crime such as housing, unemployment, poverty, discrimination, lack of education, and sometimes miseducation. We recognize these as problems and we should continue and renew with vigor our efforts to correct the problems in these areas.

There are other things that certainly must be done. Mr. Pickup mentioned the responsibility of the family, peers, schools, churches, community groups and government. But I think there needs to be more emphasis on the individual's responsibility for his participation and involvement in the crime scene. An individual is responsible for a crime or any misdeeds he commits, but also he is responsible for the development of his talents and skills. If an individual develops his talents and skills or is taught that it is part of his responsibility and it is recognized that it is part of the responsibility of the parents, schools and churches to help him develop these, then he is less likely to fall into the net of the criminal justice system. A number of organizations and programs are available in the community to help youngsters develop their talents and skills – organizations

and programs that help kids pick out careers, make wiser choices and become better citizens. And this is the type of thing I think we need to do.

It's time for hard work to get to these kids early to prevent them from falling into the criminal justice system. It's a time for inspiration – something that each and every one of you can do as leaders in your community. All of you have the capacity to inspire other folks. So while you are doing your regular jobs within the criminal justice system, I want to appeal to you as a fellow citizen to use some of your energies and talents to inspire other people, too.

There's an expression I heard once that's had a very influential effect on my life. It has to do with change. "If it's to be, it's up to me." If there's to be a change in the criminal justice system, it's up to me, not to somebody else. It's up to us – those of us who have some responsibilities and interest.

The Police and Crime Deterrence

Philip G. Tannian

One of the things that disturbs me in today's society is the extreme level of frustration exhibited by citizens about the inability of the criminal justice system to successfully deal with crime. An example of this is a recent movie where a man resorted to vigilante action to solve his personal crime problem. The audience gave the movie a standing ovation. One sees more and more of this in all of the media. Citizens do not want to hear about the problems of police chiefs. Citizens just want the crime problem to go away, and those of us in the criminal justice system are going to have to succeed in spite of our problems.

Two things I'd like you to keep in mind during this presentation: first, I think we have abandoned the attitude of personal responsibility. Economic circumstances cannot excuse personal responsibility, nor are economic circumstances the cause of crime. Second, I strongly suggest that race is not the cause of crime. If race were the cause of crime, the problem would be a hundred-fold what it is today.

I suggest to you that Michigan's criminal justice system is structured to fail. I would also suggest that the system is changeable. Let's look at the system and its problems.

The Structure of the Criminal Justice System

The criminal justice system was developed to enforce certain rules that society believes are necessary to function in a reasonable manner. I would suggest we have sacrificed efficiency and effectiveness to avoid inappropriate charges or improper conviction of the innocent. We may have gone too far in some areas. In reality, what we have is a non-system. We find interacting independents making independent judgments that dramatically affect everybody else in the system.

There is one common denominator in the entire system – the defendant. As each part of the system responds to its own needs regarding that defendant, it has impact on all of the others. The system components were supposedly developed in three areas of Constitutional responsibility – legislative, judicial, executive. All of us in the criminal justice system have worked ourselves into a state of self-containment. I would suggest that we work our way out of it and that we begin by looking at all of the pieces in the system.

Those of us in the system have a great deal in common. We react to the same criteria, yet reach differing solutions. We share many characteristics, yet consider ourselves unique and distinct. In 1974, Michigan's population approximated 9 million, and we had approximately 1 million



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A Detroit native, Mr. Tannian received a Bachelor's Degree in Accounting from Notre Dame University and a law degree from the Detroit College of Law.

crimes. For the rest of the discussion, I will address only felonies and violent crimes against the person.

Does Crime Pay?

Many experts say that a small percentage of people commit most of the crime. That being the case, if we would identify and separate that percentage from the rest of the society, we would see a decline in the crime rate. An estimated 15 percent of those arrested are responsible for two-thirds of the crime committed, but total incarcerations don't come close to representing the 15 percent. For example, we arrest 21,000, convict only 3,200 and incarcerate only 1,900. These figures lend serious credence to the career status of a criminal and the attitude that crime, indeed, does pay. Of the above-mentioned 21,000 arrests for crimes of violence, 25 percent were reduced to misdemeanors. That situation ought to be seriously examined. Forty percent of the 21,000 were dismissed by the police, and that incredible situation is being examined by the department. Ten percent of the 21,000 were denied by the prosecutor. In all, only one-quarter of the felony arrests were finally charged with a felony. Figures show that when there is a contest over guilt or innocence, the criminal justice system loses three-quarters of the time. We need to address ourselves to that serious problem.

Remembering we are told that two-thirds of all crime is committed by only 15 percent of those arrested, we in law enforcement ask: is probation working? Our preliminary conclusion is that significantly it does not. Probation – often an inappropriate penalty – gets used to a significant extent. I think because the Department of Corrections is up to its ears in felons. That's one way to make a judgment; I don't think it's the right way. Remember, even after guilt has been determined, 65 percent of the time there is no incarceration.

Deficiencies in the Criminal Justice System

The deficiencies in our criminal justice system are very well understood by criminals – and they make the system work for them with exceptional ease. Certain areas of the system need to be seriously discussed. For example, bail reform. Bail is regarded by some as an absolute right, and we have numerous people charged with murder walking the streets – out on bail. The Wayne County Prosecutor has a unit called PROB. The unit handles only the career criminal, taking only the toughest cases that we, the police department, recommend. In cases handled by PROB, the defendant will plead as charged or go to trial. The unit's track record so far is exceptional. I would also suggest serious discussion of the reform of sentencing. At the moment, sentencing appears to operate on whim and caprice – what judge you appear before, what areas you live in, what kind of defense attorney you have.

Corrections also need serious discussion, particularly to dispel the myth that rehabilitation works. Many psychiatrists I've talked to tell me that forced rehabilitation does not work. Rehabilitation is only one example – there needs to be a great deal more debate in the area of corrections.

The formal system of justice has got to compete seriously with street justice. Witnesses are terrorized when they file a complaint and we tell

them they have to accept what we call the street system of justice. The street system has literally executed witnesses. If the formal system of justice does not compete, the American public is going to find a demagogue and we will all be the losers. There is nothing so unique or sacred about our country or our society that what has happened to other societies throughout history cannot happen to ours. It seems to me that the object of the criminal justice system should be to protect society to a reasonable degree. We are not even close to that. For example, in regard to bail, it is now regarded as a right to an appeal bond after conviction by a jury in a criminal court of competent jurisdiction. That seems to me a little ludicrous, particularly when the bonds go to those who can afford it, not to everybody. Those who can generally afford it are the career criminals – career killers and narcotic dealers. In Michigan, we have the Career Criminal Offender's Statute, but, in 1974 only three people were sentenced under that statute. Fighting crime is not a question of putting large volumes of people in prison. It's a question of putting behind prison walls those people who really need to be there. And we clearly have those people. Concurrent sentencing – widely used in Michigan – is another area that needs serious discussion. Concurrent sentencing ought to be a privilege; not a mandatory thing for almost everybody.

One other area that needs to be seriously discussed is the denial of multiple warrants. We arrest people and have as many as 15 good cases on them, but it is argued – because of the sentencing practices, which to some extent are a reflection of the limited capacity of the corrections system – why charge him with more than one; it won't make any difference in the sentence. So, we are making judgments on the basis of economics – to the benefit of the criminal justice participants and not to the benefit of the general public.

Many of the areas I have touched on tie together. Each of the practices enumerated tends to dilute the effectiveness of the system and, therefore, dramatically dilutes the system. I have tried to point out some problems as we see them and as they affect us in police work, not only in terms of what we do, but what all aspects of the criminal justice system do.

We in the police department have made policy decisions without outside consultation that dramatically affect everybody else in the system. We believe we're closing the gap between reported and unreported crime. In Detroit, if we manage to decrease the number of cases we dismiss because of insufficient evidence, we question the impact on other parts of the system. If we succeed in reducing total police dismissals by just 20 percent, it will mean an additional violent felony crimes against persons work load of 70 some felonies per month. I ask the rest of the system – Recorder's Court, Defender's Office, Prosecutor's Office, Corrections – can you handle that additional work load?

The Prosecutor and Crime Deterrence

William L. Cahalan

Our system of law enforcement and criminal justice has failed in its fundamental purpose – to deter crime – and has failed to treat all persons equally before the law.

Our system of criminal justice has deterred few, if any, would-be wrongdoers from committing a crime. The reason is simple and obvious. We have not used the deterrents available to us as a society.

Use of Deterrents

The only meaningful deterrent we have in this society is deprivation of liberty. Yet, 65 percent of all those persons convicted of a felony do not lose one moment of their freedom.

I am not critical of the judiciary. They only reflect the thinking of society. We have given them practically unlimited discretion to determine whether or not a person shall be deprived of this liberty.

Let me explain. When the legislature enacts laws, they provide for the maximum penalty. Once the person is convicted of violating the law, the judge is free to impose any sentence within that maximum. In two-thirds of the cases, he imposes no prison sentence.

If we don't use our deterrents, they won't deter. We haven't used our deterrents, and they haven't deterred. Not only have we failed to deter crime, but we have not treated all persons equally before the law. The reason for this is simply that we have given to our judges practically unlimited discretion over the freedom of those who are convicted of a crime. What happens depends upon the whim and caprice of the sentencing judge with no standards and no review.

Discretionary Sentencing

We ask far too much of the members of our judiciary. Judges are trained in the law and should preside over the trial of persons accused of a crime. They are not trained in criminology, penology, sociology. Yet, we ask them to do the impossible. We ask them to fit the penalty to the criminal. We ask them to take into account the background, education and family of the convicted; and then fit the penalty to him accordingly.

We would not permit this in any other area of human conduct. We would insist that the price or tax be uniform and objectively determined; that the cost of the article fit the article and not the purchaser.

Yet, when we are talking about the God-given and Constitutionally guaranteed liberty, our judges do ask those questions; and the answers to those questions do determine the cost of the crime to that individual. We have given to our judges far too much discretion. I am not critical of the



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judges; I am critical of society for giving to them this discretion. The time has come, in fact it's long overdue, to limit the judge's discretion and impose our deterrents on the convicted.

Certainty of Punishment

We must ask our legislature to provide, at least, mandatory minimums and, at the most, flat sentences for each and every crime. Let the punishment fit the crime. Let the punishment be a meaningful deterrent to would-be wrong-doers.

Certainty of punishment does not mean a long term in Jackson Prison. It could be a fine; or if it is to be deprivation of liberty, I am certain that we can figure out a way that that deprivation would fit the crime. I am certain that we could figure out a way that the deprivation of liberty would not detrimentally interfere with family life, the schooling or the job of the convicted in appropriate cases.

Not only would the certainty of punishment deter crime, but it would recognize the fact that in this democracy, all before the law are equal.

Individual Responsibility

It is time that we recognize that a citizen is a human person, and should be treated as such; that a person who commits a crime is a human, even if he is poor, unemployed, uneducated; that, as a person, he should be treated with dignity. Certainly the most degrading and undignified thing we can say to a man is that he is not responsible for his acts.

In our attempt to fit the punishment to the criminal instead of to the crime, in our attempt to rehabilitate the accused, we have been led to the Orwellian state of controlling people instead of controlling crime.

The President's Crime Commission, I think, correctly described crime as "each single crime is a response to a specific situation by a person with an infinitely complicated psychological and emotional make-up who is subject to infinitely complicated external pressures. Crime, as a whole, is millions of such responses."

Some say it is poverty; yet, the vast majority of the poor do not commit crime. I am of the opinion that it is not poverty that forces wealthy men to rig prices, to violate the Securities and Exchange Laws and to avoid payment of income taxes.

There are some who say that it is discrimination; yet, the members of the group against whom there is greater discrimination and more subtle discrimination than any other commit the fewest number of crimes – the female.

There are some who say that it is lack of education; yet, the vast majority of those who are poorly educated do not commit crime. I don't think it was lack of education that caused Patty Hearst, John Mitchell or Spiro Agnew to commit their crimes.

We should do all in our power to eliminate poverty, discrimination and lack of educational opportunity. We should do this even though it is not the cause of crime. In fact, if we did it because it was the cause of crime, it would certainly be a base motive.

But while we work for the elimination of poverty, discrimination and lack of educational opportunities, let us also work to deter crime and to treat the convicted with the respect due him as a human person.

The Courts and Crime Deterrence

The Honorable Stuart Hoffius

The topic “The Courts and Crime Deterrence” raises many questions. What can the court do to deter crime? You have heard criticism of the court from my fellow prosecutors here and the way the judges use their discretion in sentencing defendants. The court is not an investigative agency, a punishing agency, a rehabilitation agency, or an educational agency. In turn, it is just one of the several steps in the criminal justice system designed to afford a fair trial according to rules imposed by a long history of common law and statutory law adopted by the Federal Congress and by state legislatures as well as a multitude of decisions enlarging these rights by our appellate court system.

“Justice delayed is justice denied” is a quotation often used about our court system. To a large extent the courts have been trying to keep a heavy case load moving and still afford all the protection guaranteed by the Constitution and the judicial process.

But, given its basic role, what can the courts do to deter crime? Consider the following:

1. An increased case load in recent years has meant an increase in the plea bargaining process. No judicial system today can survive without the use of plea bargaining because, as few realize, it is used where there is difficulty in obtaining evidence, where witnesses are unavailable, to save time in long trials or to save a first offender from the higher carnage when you know the judge is not going to sentence beyond a certain limit in any event.

2. The automatic right of appeal has, at times, helped to encumber the system rather than expedite the handling of cases. A recent study in our court indicated that more than one-half of the cases appealed were appeals from guilty pleas, many of which included the dismissal of other major and substantial charges. The Federal system has only a limited right of appeal from the guilty plea. A similar type rule could help to eliminate or reduce this additional time and expense involved when the accused, properly represented, understands the full effect of the guilty plea.

3. The Supreme Court in this state has recently authorized the study and preparation of standard jury instructions. Until recently, each judge has worked up his own instructions which might or might not be approved by the appellate courts when appeals are taken. Frequently, reversal resulted because of a word, a sentence, a paragraph or a clause, requiring



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remand for a new trial at a time when the witnesses were not available or lacked the ability to accurately recall the facts. This is disturbing to the public, to the courts and those connected with law enforcement. The standard jury instructions, which are presently being tested by the judges of this state, will bring about uniformity in instructions, fewer reversals because of error, and can help to improve the judicial system. This, too, will have its ultimate effect in the deterrence of crime.

4. Pre-sentence investigations required in all major cases afford the court background information of the education, work record, criminal activity and potential of the individual involved. Only with an adequate pre-sentence investigation can the judge have some insight into the type of disposition for the accused. Notwithstanding the emphasis on this phase of the criminal court load, we have too few probation officers to make the pre-sentence reports or to supervise those on probation. Disposition cannot be made in most cases until the pre-sentence is available, and a delayed pre-sentence may deny the court the opportunity of dealing with the accused in the most effective manner at a time when the criminal conduct is still current and uppermost in the mind of the defendant.

5. The courts of this state are still operating under a criminal code based upon common law types of crimes. It is ill-adapted to the present types of violations. New means of transportation, communication and computerization have left the existing code with many shortcomings. A study committee of lawyers, judges, prosecutors, defenders and so on recommended to the legislature in 1968 the adoption of a new criminal code. It still has not been adopted. Instead, the legislature proceeds to adopt new laws covering a limited number of offenses without formal adoption of an entire code with such modifications as it deems advisable. A big step forward could be accomplished by the adoption of a code commensurate with the white-collar type of crime has shown that existing law makes it most difficult for successful prosecution and conviction.

6. There has developed in recent years an increased use of the Grand Jury which has helped in solving crimes and in obtaining prosecutions and convictions. Use of the Citizens Grand Jury has long been provided for in the statutes of this state but seldom used until the last few years. the effective use of the Citizens Grand Jury has helped to solve many crimes which were formerly not effectively solved or prosecuted through the usual law enforcement means.

Michigan is still one of the states which has a one-man grand jury system. It has been used effectively in many jurisdictions. We have been able to use it effectively in the solving of white-collar type frauds which have induced many citizens (including those of modest means) to invest in schemes and frauds without any possibility of success or return of their investment. Likewise, it has been successfully used in the solution of long-standing homicides where the usual investigative techniques of law enforcement agencies had been pursued to their logical ends without success. The use by the court of these tools that have long been provided in the statutes of this state has helped to deter criminal activity.

7. The recent clamor for capital punishment in certain types of offenses leaves much to be desired. Since 1847 when capital punishment was abolished in this state, we have lived without it. A mere increase in crimes

throughout the nation does not justify the reenactment of capital punishment either on a Federal or statewide basis.

It has never been – and never will be – a deterrent to crime. The delays, expense – and the lack of uniformity of punishment – cannot justify even the consideration of the restoration thereof.

8. The public today, as well as the legislature, is looking to mandatory prison sentences in violent crimes or crimes where weapons are used. Experience with mandatory minimum sentences has proved that this is a poor way of handling criminal punishment. Discretion in the court is still one of the means of effectively speeding the court process. Mandatory minimums frequently encourage substantial reductions in charges which are not justified by either the facts of the case or the effective disposition thereof. A mandatory sentence cannot help but impede justice rather than promote it, and it is not justified in our judicial system either to deter crime, improve the administration of justice or rehabilitate the individual involved.

9. Undue publicity – and I emphasize the word “undue” – in major cases has been a deterrent in the promotion of justice rather than an assist. The public is aware that the conviction of Dr. Sam Sheppard was set aside because of the publicity afforded in that case before the present standards were created. The publicity in Lieutenant Calley’s case of the My Lai Massacre resulted in his pardon immediately after his last appeal had failed.

The publicity in the Patricia Hearst case has caused the entire public to be aware of the details, background and other crimes involved in her 18 months of consorting with the Symbionese Liberation Front. Daily press releases, interviews and photographs of her going to and from court helped to give every citizen information inadmissible in court or which could be revealed to the jury. Sequestering the jury in that case and other major cases deprives the jurors of their family life, and imposes a hardship and strain beyond the requirement which should be imposed upon a member of the public who is required to serve as a juror.

10. Perhaps the most important thing in the court’s effort to accomplish something in the criminal justice system is to speed up the process of disposition of cases.

By statute, preliminary examinations must be held within 12 days of arraignment. The court’s failure to abide by such rule merely starts the delays which prevent a prompt and speedy disposition of cases. The requirement (by court rule) that criminal cases should take priority over civic cases, when observed by the court, has helped to move the criminal load and backlog. But efforts made by all of the courts to control and speed up the process have helped to reduce the overwhelming backlog.

11. There is developing in this country a new sentiment as a result of the increase in crime of the past decade. It stems from the attitude that swift, sure and positive punishment can deter crime. Those who believe in the principle emphasize that this is the only method of reducing crime. They can cite figures, instances and document the fact that swift and sure punishment reduces crime.

Although I am not of this firm opinion because crime is far more deep-seated than the thinking individual who commits or fails to commit a crim-

inal act solely because of his fear or lack of fear of punishment, there can be not doubt that the courts can improve the administration of justice by assuring prompt, efficient trials and prompt preliminary hearing on examinations and motions. A stale case is a difficult case to try, and the advantage is with the defendant who wants to obstruct justice under those circumstances.

Conclusion

It is apparent, therefore, that the courts, working within the judicial system, can make a contribution in the effort to deter crime, but cannot do the whole job. We work within the system that has grown up over centuries with a presumption of innocence, conviction based upon proofs beyond a reasonable doubt before there can be a conviction, a jury of 12 in major cases. The burden is always upon the prosecutor to prove each and every element of the offense. Protection of the rights of the individual has been guaranteed through the courts by the many safeguards afforded the accused. These have resulted in improved training of law enforcement officers, better communication and more effective use of scientific tools and methods. A new rule, as set forth in **Miranda**, which seemed impossible to the law enforcement officer when first advised of the rule, can be acceptable, and the officer soon finds that he can live within the requirements of that rule or any other rule that the courts may impose, and even adopt them for an improved administration of justice.

In the final analysis, the courts have found that anything to prevent "justice delayed" will help to improve the administration of justice. We in the court system can live with any rule so long as we know what the rules are and the way they should be enforced.

The Corrections System and Crime Deterrence

Perry Johnson

Americans like things to work. When something doesn't work, we fix it. If we can't fix it, we cuss it and kick it and trade it. I can tell you – I can even show you the lumps and bruises to prove it – that the American public is in the cussing and kicking stage with respect to corrections; it looks like a lot of people want to trade it in on a new model. But I think they should be careful that that model is not – if I may use the word in Detroit area – a lemon.

As most of you know, there is a chorus of despair these days about the present prison system – an abandonment of hope that the corrections system can ever be made to work at all. I think it can, and I think if we give up the ship now, we might be doing it in sight of land. That would be a real tragedy.

What do we mean by the corrections system “working” or “not working”? The only sensible answer I can find is that a corrections system which works is one which protects the public from crime so far as it can.

No one knows how much crime is now being prevented by corrections systems across this country, however erratic or inefficient they may be. To know that, it would be necessary to totally abolish these systems for a period of time – an action no responsible person would advocate. Now let me say that even if the corrections systems worked *perfectly*, I doubt that the current crime rate would be dramatically, and I emphasize dramatically, curtailed. The basic causes of crime are social and psychological, and crime is enormously influenced by economic, moral, and cultural factors well beyond the purview of the corrections system. Furthermore, corrections deals with only the persistent, incompetent, or unlucky minority of criminals who are apprehended and convicted. But I firmly believe we can fix the system so it can make more impact on the current crime rate than it now does. To use somebody's term this morning, I've forgotten who it was, we're not going to carry the whole load, but we'll carry our share.

I should point out that not everyone, perhaps not all of you, agree that the principal objective of corrections is to reduce crime. Some argue persuasively that this aim is neither achievable nor proper. In their view, the only reason for the existence of a corrections system is to dispense justice. For them the only issues which should be on the board are ethical ones. The public protection aim is seen as improper, and instead, the meting out of “just deserts”, a term you are going to see frequently, is the name of the game.



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Current Trends in Corrections

A new movement in corrections called the “justice model” is based on this theory, and it is gaining substantial support. This model has a number of features attractive to liberals and conservatives alike and, therefore, will undoubtedly be put to use in a number of states. It works like this: Indeterminate or indefinite sentencing would be abolished in all forms. Each person convicted of a crime would be sentenced to a short mandatory prison term or given probation if they qualified. Prisoners could earn a 50 percent reduction of their sentence for good institutional behavior. Parole and parole boards would be eliminated.

While I have strong reservations and concern about this movement, I am at least as concerned about others who are so enthusiastic about prisons. They see them as the answer to crime, if only we would use them more generously. People with this point of view believe that the application of sufficient penal sanctions can deter convicted criminals from further crime, and potential criminals from committing crime at all because of their fear of the system. They further reason that should deterrence fail, we would achieve control through the isolation of offenders from their potential victims.

There are others who have put too much faith in corrections' ability to control crime, not be fear of punishment, but by rehabilitating its clients. This is a more humane idea, perhaps, but not more realistic. Proponents of rehabilitation originally operated from what was called the “medical model.” Persons convicted of crimes were viewed as sick or defective and as one of what one sociologist has called the “tinkering trades.” Our job was to repair people. But it has been clear for some time that the medical analogy is unsound. There is no science of “rehabilitating” the criminal offender in the same sense that there is one for medically treating the physically ill.

We are now at a critical juncture and it appears society is either going to swing back to more punitive and regressive measures as a deterrent, which will be a predictable failure, or it is going to abandon the idea that corrections can contribute to the public safety and establish a system which would be more evenhanded but which would have no other objective. These are indeed dismal prospects. This is the picture I think many corrections people see themselves in today. Morale is not very high – as you can readily appreciate. But I firmly believe that there are other choices. I suggested earlier that if we give up the ship at this point we may be doing so in sight of land. I think the system has a potential function which has been largely overlooked and almost entirely unexploited through which it can better serve the public protection.

A Better Idea

The concept I am advocating is really a very simple one. Putting it into practice is not. The unexploited potential of the system to which I refer is its untapped capacity to screen individuals who pass through it to identify the ones who are dangerous and handle them differently – holding them much longer than the non-dangerous. This may sound like rehabilitation warmed over, but it is not. Under the rehabilitation model, the parole decision amounts to deciding when the offender has been turned

from a wolf to a lamb. What I am saying is that while we cannot transform wolves into lambs, we should tell the difference and *act* on that difference. I am further asserting that human beings are not static – that they are constantly changing and sometimes for the better. We can monitor and test that process in realistic and valid ways. And since only a small minority of the prisoners we now release later prove to be dangerous, the cost/benefits of such a system should be obvious, since prisons, which are very expensive (\$50,000 a bed to build and over \$5,000 a year to keep one person in them), will be more exclusively reserved for those unsafe to release.

“But people claim it is impossible to predict dangerousness,” you may well protest, “and besides, if you could do that, why aren’t you doing it now? Perhaps this is just another scheme that sounds fine but which you cannot bring off.”

As to the feasibility of doing it, I believe strongly and have some evidence that it can, in fact, be done.

We’re not doing it well now because it requires some tools we’re only now getting, and some considerable change in our emphasis and in the way we *look* at correctional programs. Let me explain this by telling you how this would be put into effect.

How It Works

This approach would have two components. The first is the initial identification of each individual as belonging to one of several sub-groups within the prison population. Each of these sub-groups would be proven to have a particular propensity for violent crime. This is essentially a statistical research task now made possible, really for the first time, by the massive analytical abilities of modern computers. It is an initial risk assessment. Using these predictive classifications we will, soon after each offender begins a sentence, find out the “base expectancy” for future criminality and for violence.

Can we do it? On the basis of preliminary results alone, I am convinced we will be able to identify some groups with five or more *times* the propensity for violence of the average prisoner, and other groups five or more times *less* likely than the average to be a serious threat. Now, that means someone from the first group would have 20 or 30 times the likelihood of violence later than someone from the second.

I am not saying that we will ever have a perfect batting average – some will be held who are not threats, and others released much sooner who will commit heinous crimes. I am saying that we should be able to greatly improve our present performance and will certainly do much better in protecting the community than any flat-sentencing approach which relies so heavily on only one variable – the crime committed. I would also say to those who object to determining imprisonment by cold statistics that any system which does a better job of making the sentence proportionate to real risk is morally and ethically justified.

I hasten to add and emphasize that I am not talking about preventive detention. We would never be justified in holding anyone longer than the crime for which the person has been convicted merits. In Michigan, the maximum sentence set for the crime by the Legislature would be the long-

est time we could ever imprison the offender; or set by the judge, if it is one of the sentences where the judge sets the maximum.

This assignment of initial risk is the first of the two components. After that is done, we must then make an ongoing evaluation of each person's future behavior under sentence. This is not only because behavior itself is the best predictor of future behavior, but also because it would be unjust to tack a label on anyone which can never be removed. People do change, but in the categories I am talking about, there will always be false positives or people who will be incorrectly labeled.

We must give each person the opportunity to work out of the category we put him in to start with – to call himself as a better or worse risk than we had thought. This evolution of ongoing performance and behavior is the *second* element of the approach I am calling for. To make this point clearer; to show what I mean by evaluation of performance as a predictor of later risk, let me give you an example.

Half-Way Houses

We have in Michigan a number of half-way houses for prisoners nearing release which we call community corrections centers. We establish these to help rehabilitate people by assisting them in reentering society. To our dismay, we found the failure rate of these centers to be quite high; nearly half the people going there were returned to prison instead of going on to parole; they were failing at their jobs, were using drugs and otherwise fouling up. From the standpoint of rehabilitation, the centers were almost a disaster. That was not because the centers were making the convicts worse, but because they were *detecting* behavior which people could get away with on parole where we do not see them every day.

This seemed to be a setback to us until we began to think about screening the performance evaluation potential which I have been talking about here. We then evaluated the centers to follow up on those who had succeeded there, as well as on those who ultimately got out after failing at the centers. We found what we had suspected – those who failed at the centers, not usually in major ways but the kinds of failures I just mentioned, were much more often the same people who did get into heavy crime when they were paroled. In fact, they were four times more likely. And those making it at the centers were much more likely to make it on parole as well. So the centers were performing a valuable screening function in allowing us to get potentially dangerous people back off the street. And I hasten to point out we didn't structure it this way, we just sort of stumbled on to it in the case of the corrections centers.

At this point, some of you familiar with prisons may say that this is fine so far as community centers are concerned, but behavior inside a *prison* is a notoriously bad predictor of later behavior. Some confirmed criminal types can do "quiet time" in prison as long and as often as they have to. Large prisons especially tend to neither require, nor allow people to perform in any meaningful way. We have to change that so that responsible and sustained performance is demanded from everyone going through the system; so they can't slide through as they can now. If we can create a prison experience which provide that test, we should be able to separate many of the sheep from the goats and wolves from the lambs. Because one

thing most criminal life-styles manifest is the inability to maintain responsible behavior over a sustained period of time. Prisons too often don't test that now, but can be made to. But the testing of readiness to accept responsibility is a major theme of the system that I'm talking about. I should add, too, that while I've used community centers and prisons to explain my point, the same issues and possibilities apply to probation and parole. They should also be seen as opportunities to evaluate performance, and not simply as more lenient alternatives to prison.

Rehabilitation Programs

Before I conclude, there is one subject I'd like to come back to briefly. For the purpose of this argument, I have accepted the assumption, made by critics of the present system, that rehabilitation programs are failures. I have said quite emphatically that we can't rehabilitate people; we can't impose it on them, but I haven't said that rehabilitation programs are failures. I'd like to qualify that now. I think we have oversold, to ourselves and others, our ability to change people. We have learned, to our humility, that too many do not change, and I think we have learned that we cannot *impose* change. But some people do turn their lives around in prison, and it is our responsibility to provide a system where they will have the motivation and opportunity to do that. And I would point out that no corrections system in the United States today provides that across the board, including our own. I've seen too many cases where people have used skills or talents they developed in prison to make it in the community to believe rehabilitation never happens. The point I'd like to make about this is that there is complete compatibility between the system I've been talking about and the rehabilitative ideal. The same shortcomings of the system which make it a poor test of responsibility also decrease the chance that the individual will change his life-style of his own volition. Rehabilitation programs should provide the context in which we test performance.

One other thing, if a person demonstrates his readiness for responsible behavior in society only to find the door slammed in his face when he gets there, all our efforts and his will go for nothing. "Hiring the ex-con" is not simply a humanitarian gesture – it is necessary if we really are concerned about crime.

If the approach advocated here is compatible with rehabilitation, how does it fit in with the "hard line" goal we mentioned earlier of deterrence? I think it is self-evident that a system which holds persons accountable for their behavior has very unpleasant connotations for those who intend to maintain a criminal life style – they won't be able to do "quiet time" and get out so easily or so often.

Individual Responsibility Basic

In conclusion, I think the approach advocated here can be more effective and responsible than either our present practice or proposals which would eliminate all discretion and latitude in sentencing. This approach also recognizes a basic principle of human dignity and self-worth which is neglected by both the medical model and by some proposals for its reform. Under the medical model we treated offenders as defectives in need of help which we had the paternal ability and moral elevation to offer. Un-

der some reform proposals, persons under sentence would have no demands placed upon them and no sanctions or rewards would be allowable for any behavior short of criminal acts. But in free society it is only in childhood that sustenance is provided for us with no demands imposed.

In placing its greatest emphasis on individual responsibility and accountability, my proposal most departs from past correctional practice. But in so doing, it comes squarely into the mainstream of the American tradition which holds that each person is worthy of determining – and being responsible for – what he is and what he will become.

An Overview

James Q. Wilson

I would say that it was a pleasure to be back in Detroit but I'm not sure I'm back in Detroit. Perhaps a measure of the crime problem is that those of you who wish to discuss it like to keep as close to the airport as possible, perhaps with an airplane waiting on the runway. I have been in Detroit before, discussing the crime problem, under the auspices of the Wayne County Democratic Central Committee which had a meeting Bill Cahalan and I and others attended a few years ago. That meeting was held in the innermost part of the City. It was attended primarily by block club and neighborhood association leaders and labor leaders from the inner city, primarily black, and it was to me a revelation. It was the first time I had an opportunity to address this problem to such an audience. The impression I formed at that time and have carried with me ever since was the deep sense of concern of people who cannot leave the central city, who have lived all their lives in the central city, who wish to see the central city be a true community rather than a jungle. That audience was appalled by the conditions around them, crying out for help and leadership. Somehow those voices are muted. I would like to think that this conference, even though several miles from the location of the last one, is an indication that their cries are not going to go unheeded and that the concern of the elderly and the black and those who, for other reasons, must remain or choose to remain in the central city, will receive the concern and attention they deserve.

I think all of you are aware of the problems of crime in Detroit. My remarks are not directed toward Detroit or Michigan, but let me represent the problem for you in two statistics which encapsulate the problem you face in this city. At the present time, according to victimization surveys carried out by the United States Bureau of Census in 26 large American cities across the country, Detroit leads the nation in the extent to which its citizens are victimized by robbery. A person living in the central city, especially if he or she operates a small business, will almost certainly be the victim of a robbery or a burglary within a brief span of years.

The second statistic is that a young male born today in the City of Detroit and spending his life in Detroit has a greater chance of dying as a result of murder than a combat infantryman had of dying in combat in the Second World War.

These are not the conditions under which a city or community can exist. And for a long time we have dealt with the problem by moving to the suburbs and rewarding political leaders who made tough speeches at election time and did nothing between times. I think we have learned a lot in the past 15 years about this crime problem and I would like to summarize for



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Chairman of the White House Task Force on Crime in 1967, the Vice President's Task Force on Order and Justice in 1968 and the National Advisory Commission for Drug Abuse Prevention in 1972 and 1973, Professor Wilson was also a member of the Science Advisory Committee of the President's Commission on Law Enforcement and the Administration of Justice in 1966 and 1967. He has been Vice Chairman of the Board of Directors of the Police Foundation since 1970.

you very briefly some of the things I think we have learned in the hope that this might be helpful to you in your deliberations.

Some Caveats

I think, first of all, we have learned to be wary of rhetoric, the simple solution, the quick panacea, the belief that we can throw money at a problem and that money alone, undirected by common sense and analytical ability, will deal with the problem. I think, secondly, we have learned to be somewhat sober and modest in our expectations as to how much of the crime problem can we bring under control and still preserve our liberties. It's small, indeed. There's no doubt that a country can reduce the crime problem dramatically. I am told that the People's Republic of China has virtually eliminated crime. I am told they have virtually eliminated flies. They have also in the process eliminated human freedom and privacy and much else we hold dear.

Even though our expectations should be modest and even though we realize there are no simple solutions, I think we can do more than we have been able to do in the past. I'd like to direct your attention toward that part of the criminal justice system which until recently was the most neglected. I have reference to that part of the system which deals with those persons that have already been arrested. It is not that the police are unimportant; far from it. It is not that they do not need resources and strong leadership; far from it. But it is increasingly clear that in most jurisdictions, with respect to the most serious offenses and most serious offenders, the police are operating a revolving door. What we instruct the criminal justice system to do with persons *after* they are arrested is by all odds the single most important instruction we will give.

Why Rehabilitation?

In the past, the criminal justice system, post-arrest, has been based upon the rehabilitative ideal. This is an ideal that came to this country at about the same time as the American Revolution. After we won our independence from England, we turned our attention in the colonies to a general program of social reform having to do with making more lenient severe criminal codes, extending religious tolerance, and in the North at least beginning to attack the institution of slavery. There was a spirit of liberality and progressivism. Among the achievements of that spirit was the invention of the rehabilitative approach, to crime and its institutional embodiment, the penitentiary where, by a combination of solitary reflection and spiritual guidance, the arrested offender was supposed to see the error of his ways and return to society.

Though that approach did not work, it was not for want of a national effort. For at least 150 years, the rehabilitative ideal has been the governing philosophy of our correctional institutions. Indeed, the word "correctional" implies that we seek to correct. The word penitentiary implies that we seek the criminal to perform a penance. As late as 1966, when President Johnson's Crime Commission Report was issued, the rehabilitative ideal remained intact, just as it was intact when the Wickersham Commission organized by President Hoover issued its report 30 years earlier. As I think most people in this room are aware, the rehabilitative ideal is everywhere questioned, everywhere doubted. And I think it is only right that it be so. Lest you doubt the evidence, let me assure you that the studies that have so

far been done, well over 200 in number, not only in this country but in many European democracies including Scandinavia and England, show that we do not know how, by planned intervention, to take a person who was once an offender and to change his behavior into non-criminal behavior and to do that for large numbers of persons.

If you think about it, it was remarkable we should ever suppose that we could do this. It was a remarkable testimony to American optimism and to our faith in the perfectibility of human nature that we could, by exposing offenders to prisons, psychiatric counseling, group therapy or whatever, achieve in the period of a year or two, or three at most, what had taken years and years of growing up to produce. We cannot undo the evil effects of a broken home, an impoverished background, or the absence of affection in the family. I think most of us now recognize that the rehabilitative ideal has to be reassessed. Though we do not know how to do those things necessary to reform criminals, we must not stop trying, but we must no longer base our approach on the assumption that we are likely to know how. If in the future we learn how – if we can discover an anti-crime pill – fine. We certainly in the meantime must not falter in our efforts to provide for incarcerated persons decent medical, educational and employment services. But we should make those services voluntary; their participation in them should in no way be a basis for deciding when they are to be released.

At the present time, the rehabilitative approach suffers not only from inefficacy but from injustice. Rehabilitation is linked with the indeterminate sentence which means that two or more persons committing the same offense might, in the name of rehabilitation, be given very different sentences or if given indeterminate sentences released at very different times because somebody – a warden, a parole board, a psychiatrist, an expert – should decide that person A who held up a service station is ready for release, perhaps because he wears a natty blue suit and a red, white and blue striped tie and horn-rimmed glasses, whereas person B with longer hair or surly manner who refuses to use the prison library is not ready for rehabilitation even though person B committed the identical offense under identical circumstances.

Three Functions of the Criminal Justice System – Deterrence

Where does this leave us? It leaves us with three things: deterrence, incapacitation, and justice. First, deterrence. The evidence as to whether the criminal justice system can, in fact, deter crime is not as conclusive as the evidence that we do not know how to rehabilitate offenders. It is always much harder to prove something did not happen because of what we did – namely crime was not committed because of what we did – than it is to prove that something we tried to do – such as rehabilitate offenders – failed. There have been so far about two dozen published studies of the deterrent effect of the criminal justice system.

Let me describe for you what is done in these studies. What scholars do is take the probability that a person convicted of a crime in a given state will go to prison. This is called the probability of imprisonment or, if you wish, the certainty of imprisonment. Then they consider the socio-economic characteristics of the population of those states – their income, population, employment characteristics, age distribution, mobility and the like – that have an important effect on crime rate. By a statistical technique you hold con-

stant, control for, take into account these social and economic factors, and try to isolate the separate effect of the probability of imprisonment on the crime rate as reported to the FBI. Now obviously from what I've described, there are many possibilities for error. You might have an incorrect reporting of the crime rate, you might not have specified the right combination of social factors that contribute to crime, and so forth. But what is equally impressive to me is the fact that all of these studies that have been published so far, many of them written by persons who do not want to believe that the criminal justice system can deter crime, come to the same conclusion. The greater the probability of imprisonment, the lower the crime rate, other things being equal. That does not mean that if the State of Michigan should tomorrow decide that it was going to sent a larger fraction of convicted felons to prison that the crime rate would drop immediately. After all, there are other factors that could contribute in a contrary direction to the crime rate. I said that we statistically control for these factors, but, of course, that is something of an artifact.

In these same studies, the evidence also seems to suggest that the unemployment rate of young males also has a powerful effect on the crime rate, as does the density of population. Now the density of population is not something we can do much about. But perhaps we can do something about the unemployment rate of young males. The higher the unemployment rate, the probability of imprisonment being constant, the higher the crime rate. The higher the probability of imprisonment, unemployment being constant, the lower the crime rate. So here are two things we can operate on. The deterrent approach to crime is *not* based on the assumption that the *only* important policy is to change the proportion of persons going to prison. One can also operate on the unemployment rate or the labor force participation rate of young males.

It seems only common sense. What the people doing these analyses are telling us is that criminals are not very different from the rest of us. To be sure, they may want something – a ten-speed bike, a stereo cassette, a Trans-Am Pontiac – a bit more than we want it. They might be willing to take more risks in getting it. They might enjoy the having of it more than we do. But their ability to assess, however crudely, the cost and benefits of their doing it are not very different from the abilities of the ordinary consumer or the ordinary person in the legitimate labor market to assess the cost and benefits of a course of action. And if the cost of crime goes down and the benefits to be received from employment in legitimate opportunities goes down, the crime rate will go up just as surely as the consumption of gasoline will fall if the price of gasoline goes up or personal income declines.

In fact, I think we can say something even stronger than that. Because there is a relationship between unemployment and crime, you probably cannot deal with one without dealing with the other. That might seem obvious to most of you: if we want to reduce crime we ought to both make our penalties swifter and more certain and at the same time, work hard on the unemployment problem. But the relationship also works the other way. If we want to cut the unemployment rate, especially for young males, we probably have to make the cost of crime higher. Because just as some persons commit crime because its benefits are greater than the benefits of working at legitimate jobs, so some people refuse to take legitimate jobs even when offered because the attractiveness of crime is substantially greater.

Incapacitation

The second function of the criminal justice system is to incapacitate convicted offenders. By “incapacitate” them we mean simply separate them from society, not necessarily in a maximum security fortress-like prison. I know very few correctional administrators who believe that these massive relics of dashed hopes of the past are our most effective way of guarding people or protecting society. But separation in some form – minimum security facilities, confinement on weekends and evenings, or close supervision in the community. But whatever the mode of supervision, some degree of separation from potential victims should be achieved.

We are now engaged in various efforts to find out by how much one can reduce crime with prison sentences of varying lengths. The answer to that question is by no means obvious. To answer that question we would have to know, among other things, how many crimes the average criminal commits. If there are a thousand robberies in Detroit but each is committed by a thousand different robbers, then putting one robber in jail for two years is not going to have much effect on robbery rates. But if those thousand robberies are committed by ten robbers, each of whom commits one hundred, then taking one robber off the streets for a year or two can make a substantial difference. Finding out the answer to that question is important. It seems to me that we can already say this: the gains in crime control being to diminish after sentences have passed a certain length. What is that length? Well, it is not clear, but there are relatively few additional gains in terms of crime control from sentences which go beyond five years. If we wish to sentence somebody to 20 or 25 years, we should not do it on the mistaken assumption that that will have a profound effect on the crime rate.

Justice

And that leads to the third function of the criminal justice system, which is to do justice. To me, this is the most important function of all. If the criminal penalty did not deter a single crime, if prison rehabilitated no one (as in fact it does not), if taking people off the streets and separating them did not reduce the crime rate, there would still be an important function for the criminal justice system and that is to do justice. And by justice, I mean to apply known rules evenhandedly to all persons in order to vindicate society’s most profound convictions. We can debate, of course, whether marijuana should be legal or illegal. We can debate whether certain business practices should be made subject to the criminal laws. Societies will differ on this. No country, no society, has ever denied the proposition that murder, rape, armed robbery, burglary, and larceny should be crimes. Indeed, the presence of some means of controlling through regularized public mechanisms these offenses is one of the ways we can tell whether a group is a society, a civilization, or simply a nomadic tribe.

To do justice means to do justice to society, to the victims of crime, and to those accused of crime. At the present time, I think it is safe to say that we are not doing well on any of those counts. I am more concerned with putting justice back into the criminal justice system than with anything else. I happen to think also that if justice is put back into that system, it will also contribute to enhancing the deterrent and incapacitative effects of the criminal justice system.

You know that the sentences handed out to many persons are wildly disparate. Judge Marvin Frankel of the Southern District of New York, a

distinguished Federal judge, has written a powerful book critical of himself and his colleagues for their inability, even after training, to come to anything like comparable decisions about comparable cases. This means that the sentencing decisions of the judges are going to be based on the personal characteristics of the offender or the personality characteristics of the jurists. This is not a criticism of judges as a breed apart. I could do no better. I don't think anyone, by the act of donning a black robe and sitting on a bench, can be expected to do better. If the discretion that judges exercise is to be meaningful, it must be exercised within a framework of clear criteria set down by the Legislature, which, consulting its own standards of justice and the sober, second thoughts of the citizenry, classifies offenses and sets the appropriate penalty for those offenders. I am under no illusion that we can have a single penalty, so that justice can become automatic. There is nothing automatic about justice, and indeed the effort to make it so will simply shift discretion away from the judges, where it is at least now visible, into the hands of the police and prosecutors where it is much less visible. But surely we can do better than the status quo, which by any standard in most states is simply indefensible. Consider Los Angeles County where the Rand Corporation studied the sentencing practices of the Superior Court judges of that county over a period of time. They held constant the effects of the prior records of the offenders and discovered for the offense of robbery, where the offender had a prior conviction for robbery, depending on which judge you went before, you either had one chance in 16 of going to prison or one chance in 2 of going to prison or anything in between. I don't think there is any theory of justice which can make acceptable that outcome.

Furthermore, not only do sentence disparities mean that two cellmates may discover that they are in prison for wildly varying times that bear no relationship to the gravity of their offenses; it also means that society is often left unprotected. In 1960, there were 212,000 adults in state and Federal prisons. In 1970, following a decade of the most sharply rising crime rates in this country since we began recording criminal statistics in the 1930s, there were 196,000 adults in state and Federal prisons. The prison population actually declined, absolutely as well as relatively, at the very time when crime was rising so rapidly. At the present time, the chances of going to prison in the 50 states vary by a factor of six or seven to one. That is to say, in those states where the chances of going to prison are the highest, you are six times more likely to go to prison than in those states, of which mine is a leading example, where the probability of going to prison is the least. Take Massachusetts – in 1960, there were 2,000 persons in state correctional institutions. In 1970, there were 2,000 persons; 1973, 2,000; 1974, 2,000. During this time, the crime rate tripled. What does this tell you? It tells you that the decisions made by prosecutors, or judges, or parole boards or some combination of the three, are being determined, not by the gravity of the offense, not by the need to protect society, not by the need to rehabilitate offenders, but by the constraint imposed by a fixed capacity of the prison system at the other end. You have 2,000 beds or slots in Massachusetts so 2,000 people will be in Massachusetts correctional institutions. At one time in our history perhaps 2,000 was too many slots. Perhaps some people would up in prison who shouldn't be there. I can tell you now that there is nobody in the state who believes 2,000 is too many. We have seen the population increase, the crime rate triple, and still 2,000 is the magic

number. I cannot imagine any defense of the proposition that the sentencing practices of the judiciary should be chiefly determined by the warehousing capacities of the correctional system. It seems to me it is far better to have excess capacities and empty beds so people can talk about the crisis of under-utilization or how to sell off prisons to Marriott Motels so that we can make a profit on them rather than to find that sentences become shorter and prisons become more overcrowded, more degrading, more brutalizing.

Challenges to Find Solutions

I think also that society expects justice to be done. The men and women I spoke to the last time I was in Detroit at a meeting in the center part of the city, left no doubt in my mind what their views were. They were very stern views. Indeed, in retrospect it is astonishing to me how forbearing, how tolerant the American people have been. Here we are in the midst of the greatest crime wave in our country's statistical history and there is no organized effort, no prominent political spokesman calling for the repeal of the Bill of Rights. There is no general demand for vengeance. There is a desperate cry for help and a desire to see the government do what it says it wants to do – to carry out those steps that the citizens have entrusted in it. And if there is one factor I would pick out that accounts for the decline of public confidence in government at all levels since 1960, it would be the inability or unwillingness of government to deal with crime as the public would have it. And the public would have it not deal with it vengefully, not by curtailing our liberties, but to impose reasonable penalties, reasonably tailored to the nature of the offenses. And to do so in ways that do not lead to the brutalization or the degradation of persons caught up in it. And to do it swiftly, and to do it with certainty, to do it within a reasonable period of time. And if costs more money, I do not think there is a state in this union that would not, on a referendum, cheerfully support a well reasoned statement that we need more resources for public defenders, for judges, for prosecutors, and for correctional facilities of all kinds. I don't think Michigan is different from any other state. Indeed, I suspect you probably have made more progress here than other states I could name, especially my own. The backlog for criminal court dispositions in the State of Massachusetts is now approaching four years. "Justice delayed is justice denied," Jeremy Bentham said. He said it in England in the 19th century, he would say it again in Massachusetts in 1976.

It is a challenge to our democratic system. The people, as you all know, are deeply concerned about crime. It is the number one issue in most large cities and in many small ones. The people, by and large, are in agreement as to what they want done. They want swift and certain penalties appropriately scaled to the nature of the offense, without any substantial sacrifice in personal liberties or procedural safeguards. Public officials at election time say they believe in those things, too. And yet nothing happens. No new facilities are built, old prisons that have already outlived their usefulness continue to operate, unlimited judicial discretion continues to prevail. Almost every element of the system is allowed to starve for want of funds. Why is that something that we agree about, that the citizens want, that public officials say they are prepared to deliver, does not happen? That to me is the real challenge to crime in a democratic society. It is not just a challenge to our capacity to build and maintain decent communities, it is not just a challenge to our ability to reinstate justice into the criminal justice system. It is a challenge to discover whether we are truly a self-governing nation.

The Bar and Crime Deterrence

Carl Ziemba

As a lawyer, I address the problem of crime deterrence as defense counsel, and, in my opinion, defense counsel has no function in deterring crime. While there are those who would suggest that the reverse is true, I would persuade you that this is not really the case. Competent criminal lawyers do represent professional criminals and they do get them off; but that success is achieved because of the lawyer's competence and it is achieved within the system of established rules. Then, of course, the accusation is laid that these rules within which the defense lawyers operate are created by the attorneys and are merely loop-holes through which the guilty escape their just retribution.

Purpose of Procedural and Evidentiary Rules

But this is not really so. The rules of law, that is of procedure and of evidence, were adopted by the courts, and the legislatures in many instances, after long study and longer experience because the primary interest of the administration of criminal law is not to see that the guilty are convicted but rather to assure that the innocent shall not be wrongfully convicted. We cannot condemn merely by accusation; we must establish guilt.

Our court system operates on the premise that it is better that a few guilty escape just retribution than that one innocent person be wrongfully convicted. While, to concerned citizens, the rules seem to be weighted in favor of the accused, these same rules allow the innocent the opportunity to assure that he will not be wrongfully convicted. If the system is devised so that the innocent person is not wrongfully convicted, we must accord the innocent an opportunity to take advantage of the very rules which assure that he will not be wrongfully convicted. But then, we ask, who are the innocent among the accused? How shall we in the process separate the guilty from the innocent so that we might know to whom we might allow the use of the rules designed to assist the innocent to escape wrongful conviction?

Of course, to ask the question is to demonstrate that we must allow the guilty as well as the innocent to take advantage of the rules, for if we deny anyone the rules, we will have no way of knowing if he is innocent or not. It is the very process of administering the rules of the system which permits us to discern who the guilty are and who the innocent are.

Concern of Defense Counsel

Therein lies the function of defense counsel. He, presumably, knows these rules which are designed for the aforementioned reasons. He is not



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the judge nor the jury in the case. His function is to defend the accused, which is to say, his function is to see that the accused is given the advantage of the rules which protect the innocent because his accused may be innocent.

Defense counsel's job in deterring crime is, at best, peripheral. His job is to present a defendant's case in the most favorable way to the defendant; that is, to present the uniqueness of the defendant's case. Defense counsel, if it appears the defense can be honestly advanced, must present it on behalf of the defendant. I do not believe defense counsel should unmask the defendant or decline the case in event his accused admits to defense counsel his guilt, but does not wish to plead guilty before the court. We must preserve the system inviolate in order to allow the defendant a defense.

Another aspect of defense counsel's peripheral deterrent function is dependent upon the wrongdoer's respect for the system of justice. If a defendant feels he has been convicted unfairly, he will not be persuaded to change his ways. Even the guilty expect fair treatment. If a defendant is found guilty after a vigorous defense, he probably won't nurture a smoldering resentment while in prison – and he might even be receptive to rehabilitative measures. This is especially essential where an indigent defendant receives court-assigned defense counsel. The defendant must feel that his defense was of the same caliber to be expected from a retained lawyer.

Much of the street crime is committed by socially and economically depressed people, and the rights of these groups are sometimes not fully respected by the police. It may be shocking to some, but sometimes a police officer will lie in court to convict such a defendant. There is great resentment because of this and, therefore, less respect for the system. Thus, a competent and conscientious defense counsel does peripherally contribute to the deterrence of crime.

Not long ago, a defense counsel fought and won a long and arduous battle in Detroit Recorder's Court to eliminate discrimination against blacks and the young in the jury system. I think our system of justice is the better for the battle. As bad as the crime problem in our city is, it is not as bad as it might have been but for the peripheral deterrent effect of that defense counsel's work.

The Legislature and the Criminal Justice System

Paul A. Rosenbaum

Those people who have preceded me on this program are experts in their fields, and they have staffs of experts and many years of experience. The Michigan Legislature must implement legislation dealing with the criminal justice system and we – the legislators – do not have the staff. We do not have the so-called expertise.

Difficulties in the Legislative Policy Process

The House Judiciary Committee has 800 bills and, in two years, 55 of those bills have been reported out. We are presently looking at the revision of the criminal code, the juvenile code, the probate code and the decriminalization of the traffic code. Revision of these codes is a tremendously complex, very emotional area, because every word we enact could vitally affect every person in this state. As I said, we don't have the staff or the expertise in relation to the criminal justice system, and it concerns me greatly. The Legislature recently passed bills relating to guilty-but-mentally-ill plea, heroin, and wire-tapping. They passed because I have some degree of trust among my colleagues, not because we have the expertise in the criminal justice system. We don't know if these bills will help – I believe they will, but no legislator can be absolutely sure.

There is no such thing in the Legislature as right or wrong. Eloquent people present their causes before legislative committees – judiciary, appropriations, etc. – but unless their eloquence receives enough supporting legislative votes, their motions are denied. Legislators have to fight hard for a bill they believe in, and they have to convince enough of their colleagues of the merits of the bill in order to get it passed. I recently came up with a concept calling for mandatory sentencing for large heroin dealers – 650 grams or over – minimum life sentence, no eligibility for good time or parole. Those of us involved spent 60 to 70 hours working on the bill. We have made a conscious effort to deal only with the people on top. I also support the rehabilitative program, but I personally believe that all the money in the world will not rehabilitate junkies. I'm more concerned in terms of a strict law enforcement approach for the people in this state who are robbing the state of its most precious asset – its youth.

I must stay that I am opposed to wire-tapping in any shape or form, except when it comes to large heroin dealers. I inserted in a bill a section entitled “**limited electronic surveillance only for controlled substances.**” The Civil Liberties Union castigated me for even a suggestion



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of wire-tapping, but I believe anyone dealing in one million dollars of dope should be put away for life – and electronic surveillance of such people is necessary. We must not put their civil liberties above the civil liberties of other people. Any police agency in this state, on probable cause, with the determination that every single method available was to not avail, could apply to the Attorney General on reasonable cause to go after a large dope dealer. If the Attorney General thinks there is a reasonable cause, he has to go to the Court of Appeals, which is the second highest court in the state, to get authority for a tap. This would be a legal tap. We legislators spent 500 hours around this state asking people for viable alternatives. The only single response was – legalize heroin. No way, ladies and gentlemen, no way.

Prioritizing Problems

Where do legislators put their priorities? If a legislator has a bill he wants to get passed, he must court his colleagues to obtain their support. You can't be disrespectful when you are asked to review bills of your colleagues; my staff reviews bills 16 hours a day and they never catch up. We have 110 members in the Michigan House. We have bills of every description submitted to us – from constituents, chiefs of police, judges, prosecutors, sports promoters, etc., etc., etc. As Chairman of the House Judiciary Committee, I try to set my priorities in terms of the needs of my office and the public welfare.

When considering priorities, we also have to consider cost. Right now, we are dealing with a financial problem in the state budget of somewhere between \$300 and \$500 million. If we were to ask for an increase in taxes and indicated that the additional revenues were being appropriated to fight crime, we would immediately be faced with demands for a share to go to other worthwhile causes – mental health, higher education, K-12, social services, and so on. In my opinion, it is easier to raise taxes out front than it is to cut the budget. People get angry about tax increases, but they usually understand the necessity. They get mad when we cut the budget and we get calls from people saying their child has lost his remedial reading program, tenured teachers have been laid off, long-service government employees have been laid off, etc., etc. When we cut the budget, a legislator can get as many as 500 irate phone calls a month – just from his own district. So, you see, it is extremely difficult to set priorities.

Briefly, I'd like to mention two more items.

First, the Committee on Investigations, which Governor Milliken, in my opinion, considers the most important piece of legislation in this so-called criminal justice area in this legislative session. The Committee would have no prosecutorial functions – it would simply be an investigative, fact-finding body. I am concerned about this from a strictly legal point of view. There is corruption in this state and I do think such a fact-finding body is needed. However, I am concerned that any irresponsible person on that Committee could absolutely ruin the life of any public figure whom the Committee might be investigating. If the name of any person being investigated by such a Committee had his or her name leaked, that person would never get to first base. I believe that a person should not be tried by a fact-finding body that has no prosecutorial powers. The Committee on

Investigations has the potential to do great harm to innocent people, and I think we have to be very careful on that.

The last item I'd like to refer to is pornography and obscenity. The Michigan Supreme Court reviewed pornography and obscenity and, after 2½ years, they issued an Opinion that was 2 paragraphs long – and those paragraphs said nothing. I had a meeting with the Court and asked: where are we going on this; what have you said here? Basically, they said there is no law on obscenity and pornography in the State of Michigan for consenting adults. Basically, the Michigan legislators can do anything they want to do, but you must come back to us and we'll tell you whether you are right or wrong on it! That is where we are with regard to obscenity and with the issue of consenting adults. There are also 50,000 people who say that government has no business being involved in regulating a person's mind; government cannot regulate a person's morality. The subject is a problem and I understand that. I have on the calendar now a bill that I believe will pass. It deals strictly with juveniles and it sets definitions – sexually explicit visual material. The purpose of the bill is to pass it through the Legislature and send it to the Supreme Court, let them act on it and allow us to at least establish Constitutional groundwork in which we can at least look at the area of consenting adults.

In closing, let me say that being a legislator at times can be very frustrating. You can't reach everyone and you can't please everyone. Every time you vote on an issue, you know you are going to alienate at least 50 percent of the people. There is no issue – whether it be on a Federal, state or local level – on which you will vote that, the minute that vote is known, you will not alienate people.

Some Reflections on the Criminal Justice System

The Honorable George W. Crockett, Jr.

I have been asked to reflect on the criminal justice system and its operations. At the outset, permit me to deal briefly with what I regard as seven key misconceptions concerning the function of the courts (and judges) in reducing crime. Then I shall speak more at length about why we have so much crime, why it is increasing, and why no reduction of any major significance is likely to occur in the foreseeable future.

Misconception of the Role of the Judiciary

Misconception No. 1 is the belief, shared by many people, that the criminal courts have a responsibility to reduce and/or control crime. The courts (and the judges) have no such responsibility. The sole responsibility of the judicial branch is to hear and decide the charge; to interpret and apply the law equally; and to do this without fear or without favor.

Misconception No. 2 concerns our system of bail. Why do judges allow pre-trial release for people who have a prior criminal record and who have been arrested and charged with serious offenses? The answer is that a *charge* is not a *conviction*. Bail was never meant to be a punishment; otherwise, all of us would live at the mercy of the police who make the arrest and the prosecutor who makes the charge. The sole function of bail is to assure the defendant's attendance. Until there is a conviction the arrested person must, under our system of justice, be considered to be innocent. And, as an innocent person, he or she has a Constitutional right to his or her freedom pending trial, subject only to such conditions as are reasonably necessary to insure their presence to answer the charge.

Misconception No. 3 relates to our exclusion of evidence obtained by unlawful police action. Why do we judges refuse to consider – why do we actually throw out – convincing evidence of guilt if the evidence was obtained in violation of the Constitution? The short answer is that unconstitutional conduct by public officers can never be countenanced by judges who are sworn to uphold the Constitution. Those who would enforce the law must themselves by the first to obey the law. Refusal to condone their illegality tends to insure their observance of our Constitutional right.

Misconception No. 4 relates to the practice of plea-bargaining. Why do courts accept guilty pleas from defendants for offenses carrying a lesser penalty than that for which they were arrested and initially charged? The answer is that you, the public, the community, are not ready to pay the



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In 1971, Judge Crockett was appointed by the Michigan Supreme Court to the Special Commission to Review the Judicial Article of the Michigan Constitution. Judge Crockett is an expert in constitutional law and is a frequent contributor to several law journals. In 1971, he founded and was first Chairman of the Judicial Council of the National Bar Association. He is a graduate of the University of Michigan Law School.

cost of doing otherwise. The alternative to plea-bargaining is a readiness to conduct a trial in every case.

Misconception No. 5: Why do we judges not give more severe sentences? Contrary to popular notions, the aim of sentencing is not punishment. Sentencing is intended to do what is reasonably necessary to change a law violator into a law-abiding citizen. Incarceration may be needed to achieve this objective and, if so, we sentence to prison. If incarceration, in our judgment, is not needed to accomplish the result, we give probation. If we conclude that incarceration is necessary, the precise length of incarceration needed to achieve rehabilitation cannot be pre-determined with any degree of certainty. So, we judges fix only a minimum term and the statutory maximum is fixed by the Legislature. It then is left to the Parole Board to say definitely how much longer than the minimum period of incarceration should be served.

Misconception No. 6 is the notion that the criminal justice system can police a community's morals. Experience shows that all of our attempts in this regard always have met with failure. We should recognize that the individual's right to life, liberty and the pursuit of happiness includes also his right to make a moral fool of himself; at least so long as no one else's rights are being violated.

Now, *the Seventh and Last Misconception* I want to touch on is the currently prevalent idea that we can end or control crime, that we can provide security for our persons and our property by recruiting and training a larger police force and giving them more sophisticated equipment. This, I submit, is the thinking that brought about that Federal "pork barrel" known as the "Omnibus Safe Streets Act" and the accompanying expenditure of hundreds of millions of dollars in Law Enforcement Assistance Administration (LEAA) Funds. The projected expenditure of LEAA Funds for Detroit and Wayne County, for example, in 1975 was \$7 million but nothing, nothing was allocated for eliminating the causes of crime and thereby reducing the need for courts, police, prosecutors and prisons.

Causes of Crime and Some Answers

Now we come to the question: Why is there so much crime, and why does it continue to increase, and what are we to do about it?

The late Will Rogers used to say the people of Kansas will vote dry as long as they can stagger to the polls. If he were around today, I suspect he would note that the members of the Establishment – non-white as well as white – are prepared to do anything to win the war against crime – except pay for it.

We need to face up to the fact that crime – particularly the 75 percent that represents crime against private property – is inherent in any economic system that glorifies private property the way our American economic system does.

Our crime rate is increasing because in this, the most affluent society the world has ever known, we are daily producing more and more have-nots, more and more human cripples. We have produced a standard of living for some of us that is the envy of the world; but we still have unemployed and about 50 million of our citizens are officially classified as poor.

The situation is intensified with respect to our black poor. In their case – and for 300 years – we have confined them to a ghetto existence,

and we have sown the winds of ignorance, poverty, hatred and despair. Now we are reaping the whirlwind of increased crime and increased violence. Even today, 20 years after the first desegregation decision, our President and we, as a nation, continue to avert our eyes while a full tenth of the population is kept in a state of servitude by the denial to them of the education, the training, the skills and the opportunity needed to make them self-confident and self-sufficient members of our society.

Now the cost of removing these restrictions and correcting these injustices – the cost of government-guaranteed full employment, of substantial homes in healthy environs, of an educational system that educates and of freedom from fear in one's old age – this cost, which in considerably less than what we squander in munitions and so-called "foreign aid," is, nevertheless, more than we are willing to pay.

So, we come with too little and too late and still we expect to cope with appetites that have been straining at the seams for decades. When these appetites refuse to be constrained any longer – when the flood gates of sheer anger, jealousy and hate suddenly burst open with riotous turmoil or with individual acts of personal violence or thievery, then we wonder: "What on earth has come over *those people*?" The answer is simple: Those people want what you want. They want what Madison Avenue tells them repeatedly they should have and what our much-vaunted free enterprise system continues to deny them. And if they can't get it through the orderly process of elections, of equal employment opportunity and of fair laws equally applied, then they are going to take it by thievery and/or brute force. It is as simple as that!

Advocacy of speedier convictions, of more severe sentences, of more and better-equipped police, and more and tougher judges are not the answers. No matter how many detention facilities we build, no matter how much we judges increase the sentence, no matter how much we increase the size and the mechanical efficiency of our police forces, and no matter how many additional judges and courtrooms we provide, we are not going to begin to stem the tide of increasing crime until we come to understand and accept one simple truth: that punishment is no cure for poverty, nor for drug addition, nor for ignorance, frustration and despair.

It should not require extended exposition to convince intelligent people that our growing national minority of poor people and non-white people have only two recourses in their natural and legitimate struggle for social justice. They can endeavor by persuasion and by the election process to move the human feelings and the conscience of those of you who make up the affluent society sector of the population; or, they can make a desperate resort to violence – such as the individual criminal acts which plague us now or the riots we experienced in Detroit a few years ago.

Those of us who hold leadership positions or aspire to these positions had better start listening to the poor people and the non-white people in our midst, these people who have little or no confidence in our system of justice nor in the ability of our economic system to respond to their needs. We had better address ourselves in earnest to a massive program of reclaiming *all* of our alienated poor before it is too late – before the alienated non-white and the alienated poor white forget about their race and color differences and come to understand that class and economic distinctions –

not racial or color cleavages – dominate modern-day life in this country and all over the world.

Nothing that I have said to you is new, either with respect to the causes of crime nor with respect to what is needed to reduce and prevent crime. But what I have said does take on new perspectives in the light of our increasing fears and genuine concerns about inflation. Because inflation, with its increased unemployment, higher prices and depreciated values exacerbates the conditions we have mentioned which produce crimes and criminals. The poor and the under-privileged suffer most during periods of inflation, and that is where the seed of individual and group revolt against the economic and political order can be expected to ripen.

Let me close with this summary statement and, hopefully, on a little more positive note: I believe that the framework of our American Constitutional processes does allow for the kind of substantial and fundamental changes in our economic system that are absolutely necessary to any reduction in the causes of crime. Within that framework, it is possible to elevate the poor and/or non-white to a genuine status of equality of opportunity in employment, in education, in housing and in all social services. obviously, this will pose a direct challenge to our present economic and social structure, a structure which thrives on inequality, on pitting class against class, on perpetuating ethnic and racial distrust and hostility.